IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1009 OF 2007

Haribhau Sudam Ohol ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.V.M.Thorat, Adv. for the Applicant.
Mr.S.S.Pednekar, APP, for the State.
Mr.S.Salunke, Adv. for Orig.complainant.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 28th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking anticipatory bail in C.R.No.74 of 2007 of Mohol Police Station. The said case is under Sections 302 and 120-B of IPC.

3. It is the prosecution case that the applicant is the owner of tempo bearing No.MH-13/G-1353. A few months before the incident, the labourers who were working with the applicant had joined the work site of the

complainant Balasaheb Gaikwad, hence the applicant had threatened the complainant and his brother Brahmadeo (deceased) with dire consequences to their lives. Coaccused Mainnudin was serving as a Driver on the truck of the complainant. He was removed by the complainant because of his arrogant behaviour and dissatisfactory work. Coaccused Mainnudin joined the applicant and was working as a Driver on the aforesaid tempo.

4. It is the prosecution case that these two persons i.e. applicant and Mainnudin both had grudge against the complainant and his brother Brahmadeo; and hence they conspired to commit murder of Brahmadeo. On the day of the incident i.e. on 23rd February, 2007 the complainant along with one Nagnath was proceeding on motorcycle to the Tehsil Office in Mohol. Brahmadeo the younger brother of the complainant was accompanying them on another motorcycle. As soon as they left, Brahmadeo was approximately 100 to 150 ft. ahead of the motorcycle of the complainant. At that time, one tempo came from the opposite direction and gave dash to the motorcycle of Brahmadeo. The complainant saw that the driver of the said tempo

was Mainnudin. After Mainnudin got down from the tempo, the present applicant came there on motorcycle and he made Mainnudin sit behind him on motorcycle and both of them immediately went away from there. On account of the said accident, Brahmadeo died.

5. The learned Advocate for the applicant has submitted that the applicant supplies milk to Central Dairy at Mohol and for supply of milk the tempo in question is used. He has submitted that the tempo used to go everyday to Mohol in order to go to Central Dairy. The tempo used to leave everyday between 8:45 a.m. to 9:00 a.m.. Thus, it is submitted that it was in the routine course that the tempo was proceeding to Mohol and while it was proceeding to Mohol in routine course the incident had occurred in which Brahmadeo lost his life. Thus, it was submitted that it is not a case of murder, but, it is a case of accidental death. It is further submitted that the applicant had not caused the accident and hence in such case the applicant is entitled to be released on anticipatory bail.

6. In the present case, the incident has occurred just after 9:00 a.m. and the FIR has been registered at 11:30 a.m. The complainant who is an eye witness to the incident has stated that due to previous enmity and grudge against the complainant, the applicant along with coaccused Mainnudin conspired to commit murder of Brahmadeo, as stated in paragraph-4 above.

7. Looking to the complaint, *prima facie*, it appears that it is not a case of accident. Hence, I am not inclined to grant anticipatory bail to the applicant.

8. Application is rejected. The lower Court shall not be influenced by any of the observations made in this order while deciding the application for bail or while deciding the trial.

(SMT.V.K.TAHILRAMANI,J.)